

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1103/96,1107/96,1155/96,
1156/96 & 1157/96

in

SPECIAL CIVIL APPLICATION No 4088/95,4089/95,7649/95
7650/95 and 7651/95

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and

MR.JUSTICE S.D.PANDIT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ARVINDBHAI B PATEL

Versus

GUJARAT STATE PHARMACY COUNCIL & ANR

Appearance:

MR AM RAVAL for Appellants

MR DT SONI for Respondent No. 1

CORAM : MR.JUSTICE S.M.SONI and

MR.JUSTICE S.D.PANDIT

Date of decision: 04/12/96 & 5/12/96

COMMON ORAL JUDGEMENT

Per S.D.Pandit,J.

1. All these 5 Letters Patent Appeals are before us today for admission. They are preferred against the common judgment of the learned Single Judge, passed in Special Civil Applications Nos.4088/95, 4089/95, 7649/95, 7650/95 and 7651/95. By one common judgment,all these Special Civil Applications have been dismissed by the learned Single Judge by the order dated 30th August, 1996.

2. The present appellants were served with a show cause notice by the Gujarat State Pharmacy Council. In the said notice, the following claim was made.

The Executive Committee has reason to believe that the certificate and the application forwarded by you to the said Council are not correct and/or genuine and your name has been entered in the Register on account of misrepresentation or suppression of material fact.

The excerpts of complaint received against you are as under :-

"Facts regarding professional experience and the evidence of being approved as qualified persons submitted with the application for registration as pharmacist are misrepresenting and/or suppressing of a material fact."

And that in relation thereto, you have been guilty of enrolling yourself as registered pharmacist by representing and/or suppressing of a material fact.

I, am, therefore, directed by the Executive Committee to call upon you which I hereby do, to show cause why your name should not be removed from the Register under Section 36 (1) (i) of the Pharmacy Act,1948. An reply or communication or representation which you may desire to make respecting the said charges or your defence thereto must be in writing and addressed to the Registrar, of the said council within three weeks from the date of receipt hereof.

And, I am further directed to give you

notice that on Thursday, 8th September, 1994, a meeting of the Executive Committee will be held at the office of the Gujarat State Pharmacy Council, Block No. 0/4, New Mental Hospital Complex, Asarwa, Ahmedabad- 380 016, at 12.00 hrs. Noon. to consider the above mentioned charges against you and decide whether or not they should direct your name to be removed from the Register pursuant to Section 36 of the Pharmacy Act, 1948. You are further invited and required to attend before the Executive Committee at the above mentioned place and time to establish any denial or defence that you have to make to the above mentioned charges and you are hereby informed that if you do not attend as required, the Executive Committee may proceed to hear and decide upon the said charges in your absence.

To the said show cause notice, the appellants before us had filed their reply and they have contended in the said reply that they should be supplied the documents or material on which the committee has reason to believe as mentioned in their reply. But the Executive Committee did not comply with their request to supply the said documents claimed in their reply and proceeded to consider the action taken by them against the present appellants under Section 36 of the Pharmacy Act, 1948. After holding the necessary inquiry and giving a reasonable opportunity to the present appellants, the Executive Committee came to the conclusion that the names of the present appellants who were registered as Pharmacists should be removed from the register. The said decision of the Executive Committee was confirmed by the State Council and intimation to that effect was given to the present appellants. The appellants had preferred the appeals before the State Government as provided by Section 36 (4) of the Pharmacy Act. The said appeals were dismissed, and, thereafter, the appellants had preferred the Writ Petitions in this court.

4-12-1996.

In the Writ Petitions, the main contention of these appellants is that the appellants were not supplied the documents which were called by them in their reply to show cause notice and the appellants were not also supplied the report of the Executive Committee submitted before the State Council for the purpose of confirming

the order of removal. It was contended by the appellants before the learned Single Judge that non-supply of the said documents would amount to denial of reasonable opportunity of being heard. It would be against the principles of natural justice, consequently the order of removal of name as Registered Pharmacist must be quashed. The learned Single Judge considered those contentions and has come to the conclusion that the non-supply of those documents as well as the reports submitted by the Executive Committee to the State Council has not resulted into any prejudice to the appellants and in view of the latest judgment of the Supreme Court in the case of STATE BANK OF PATIALA V. S.K.SHARMA, 1996 (3) S.C.C., 364 the non-supply of those documents could not be result into denial of reasonable opportunity and would not also amount to acting against the principles of natural justice. He further came to the conclusion that from the material produced before him, it was not possible to hold that the Executive Committee was not justified in removing the name of the appellants from the register of the registered pharmacists and he consequently dismissed all those petitions and hence the present Letters Patent Appeals.

3. We have heard the learned advocate for the appellants at length and the learned advocate for the appellants has raised the same contentions which he has raised before the Single Judge. According to him, the denial of documents as mentioned in the reply to the show cause notice as well as denial of the report of the Executive Committee to the State Council for confirming the order of removal would amount to denial of reasonable opportunity of being heard and has resulted into breach of principles of natural justice. In support of the said contentions, he has cited before us the cases of T.S.RABARI V. STATE OF GUJARAT AND ANOTHER, 1991(2) G.L.R., 1035, MANAGING DIRECTOR, ECIL, HYDERABAD & OTHERS V. KARUNAKAR AND OTHERS 1993, (4) S.C.C., 727 and KASHINATH V. UNION OF INDIA, A.I.R.1986, S.C.C., 2118

4. Before considering the said submission of the learned advocate for the appellants, it is necessary to consider the nature of the proceedings in question and the action taken against the present appellants. Admittedly, the present appellants had applied to the State Council for registering them as registered Pharmacists under the Pharmacy Act, 1948. While making the said applications, they had produced certain certificates and on the strength of those certificates, they got themselves registered as pharmacists. It is an admitted fact that by issuing the show cause notice on

11-5-1991 in case of appellants in L.P.A.No. 1155/96, on 14-5-91 in L.P.A.Nos.1156/96 and 1157/96, whereas on 12-8-1994 in L.P.A.Nos. 1103/96 and 1107/96, it was informed to the appellants that the Executive Committee has reason to believe that the certificates and applications forwarded by the appellants to the State Council were not correct and/or genuine and their names have been entered in the register on account of mis-representation or suppression of facts. Thus, what was informed to the present appellants was that the appellants were not possessing the necessary qualifications or requirements for getting themselves registered as registered pharmacists under the Pharmacy Act. No doubt, in the said show cause notice, the Executive Committee of the State Council had informed that Executive Committee had reason to believe on the strength of certain material before them to come to that conclusion. It is vehemently urged before us by Mr. Raval, the learned advocate for the appellants that when that was mentioned by the Executive Committee and when the appellants had demanded the said material, the appellants ought to have been supplied the copies of the same material before taking the final action against them. According to him, the denial of the said material amounts to denial of reasonable opportunity and that action is in violation of the principles of natural justice. But it must be remembered that what is alleged against the present appellants is that the appellants were not having the necessary qualifications or requirements and the material to show that they were possessing the necessary qualifications of registered pharmacists were not genuine one and the Executive Committee wanted the appellants to satisfy them that their certificates were genuine and correct. Therefore, it was not at all necessary for the Executive Committee to give reasons as to why they are saying so. It was for the appellants to show and satisfy the Executive Committee that the certificates produced by the appellants were genuine and correct certificates and that they possesses the necessary qualifications for being registered as registered pharmacists under the Pharmacy Act. It must be remembered that the material is not the basis for the actions against the present appellants, but the appellants own applications and the certificates produced by them for getting the registration are the material which is doubted and which is questioned by the Executive Committee for removing their registration. Therefore, it was necessary for the appellants to produce the necessary material before the Executive Committee to satisfy the Executive Committee that the appellants possesses the necessary qualifications for being

registered as registered pharmacists. The appellants in L.P.A. No.1103/96 have filed annexure 'F' in their petition. This annexure 'F' is a letter issued by the Registrar of the council to the appellants and in it, it has been clearly mentioned that in a Sessions Case the certificates which were exactly the same as of petitioners were found to be forged and the persons purported to have signed them had no authority to issue such certificates. Thus, by that letter the material which lead the council to take action is disclosed to the appellants.

5. At the time of arguments, we had even given offer to the learned advocate for the appellants that he should point out and produce the certificates before the court and satisfy this court that they were possessing necessary qualifications for being registered as registered pharmacists, but the said offer given by us is not availed of by the learned advocate for the appellants. No material is produced before us to show that in fact the appellants possesses the necessary qualifications for being registered as registered pharmacists. It must be remembered that the imputation for the action taken against the present appellants was of a such nature that the burden to prove that the said action against them was not justified lies on the appellants themselves. If the provisions of Section 106 alongwith the illustration b of the Indian Evidence Act is taken into consideration, then it would be quite clear that it is for the appellants to show that the appellants were possessing the necessary qualifications for being registered as registered pharmacists. It is well-known principles of law that there could not be a negative proof, there must be always positive proof. It is for the appellants to show that they possess necessary qualifications and there is no justification for their names being removed from the Register of the registered pharmacists and the appellants are not even in a position to show to this court even at this stage that they possess the necessary qualifications.

6. The cases cited by the learned advocate for the appellants are under the Service Law and all those cases are governed by Article 309 to 311 of the Constitution of India. Under the provisions of Article 311 of the Constitution of India, a fundamental right is created in favour of the government employee of not removing him from services without following the necessary procedure as laid down in the said Article. The case of the appellants could not be equated with the case of a government employee. The action in question is an

administrative action. Therefore, in the circumstances, the cases which the learned advocate for the appellants has cited before us has no application at all to the facts before us. Therefore, it is not at all necessary to go into the details of those cases.

7. Natural justice generally requires that the person liable to be directly affected by the proposed action by way of an administrative decision, must be given an adequate notice of what is proposed so that he may in a position (a) to make representation on his behalf or (b) to appear at a hearing or enquiry and (c) to prepare his own case and to ensure the case he has to meet. Thus, there must be a fair opportunity of hearing and that opportunity must be a real one. In the instant case the material produced by the appellants clearly shows that they were given the notice of proposed action and they were given ample opportunities to make representation on their behalf and to appear for the hearing. Their insistence in asking for the material which made the Council to take the action in question is not at all justified. In the case of *M/s.Chingleput Bottles v. M/s Majestic Bottling Co.* A.I.R.1984, Supreme Court, 1030 the Supreme Court has considered the question of non-disclosure of the information received by the Commissioner while refusing to give a licence in favour of the petitioner and the Supreme Court has come to the conclusion that the Commissioner is not bound to disclose information or material on which the refusal was based. The same view is taken in another case by the Apex Court in the case of *Bishnu Ram Borah and another v. Parag Saikia and others*, A.I.R. 1984, Supreme Court, 898. In our opinion, the case before us is covered by the principles laid down in those cases. It is not at all necessary for the State Council to disclose to the appellants that what was the material before the Executive Committee for asking them to satisfy them that they were holding the necessary qualifications for continuation of their names as registered pharmacists. The non-disclosure of the said material will not affect their right and has not caused them any prejudice or it could not be said that the non-disclosure of the said material has resulted into any miscarriage of justice. If the letters of the said Council which are produced by the appellants are taken into consideration, then it would be quite clear that the said Council has given repeated opportunities to the appellants to produce before them the necessary documents to show that their registration as registered pharmacists were just and proper. Number of opportunities were given to the present appellants to satisfy the State Council that the

appellants were possessing the necessary qualifications for being registered as registered pharmacists. The failure of the appellants in producing the material before the State Council has resulted into the action taken against them. Therefore, it could not be said that the action taken against them was at all illegal or improper or vitiated.

8. The contention raised by Mr. Raval, the learned advocate for the appellants that the appellants ought to have been given the report submitted by the Executive Committee to the State Council. Here it must be stated that if the provisions of Section 36 of the Pharmacy Act, 1948 are taken into consideration, then it would be quite clear that the order passed by the Executive Committee regarding the removal of their names from the registered pharmacists will become effective only after it is confirmed by the State Council. When such a provision is there, then it is expected that the higher authority which gives confirmation to the order must have application of mind before passing the order of confirmation. If the order which is produced by the appellants in Special Civil Application No.4088/95 of L.P.A. No.1103/96 at Annexure 'E' is taken into consideration, then it would be quite clear that the said council has not confirmed the said order blindly or without application of mind. The order does mention and indicates that the State Council had taken into consideration all material and only after application of mind has confirmed the said order of Executive Committee. There is no question of supplying the copy of the report made by the Executive Committee for seeking the confirmation of their order to the present appellants. The appellants have to point out from the material that the order of confirmation is passed without application of mind. Only if the court is satisfied, to that extent, the court can interfere with the order of confirmation, but that is not the case in the case before us. In our opinion, it is not at all necessary to supply the copy of the report submitted by the Executive Committee to the State Council to the appellants and consequently the non-supply of the said copy would not amount to denial of reasonable opportunity to the present appellants. The action in question is in the administrative nature, it is not a judicial order.

9. Thus, in view of the above discussion, we are of the opinion that the conclusion to which the learned Single Judge has arrived at namely that non-supply of the copies to the present appellants has not resulted into any prejudice to them and that there is no material to

interfere with the order in question which has been challenged in the Writ Petition is proper and correct. Thus, in our opinion, the learned Single Judge has not committed any illegality. We, therefore, hold that the present Letters Patent Appeals deserves to be dismissed summarily. We are accordingly dismiss them summarily.

10. The learned advocate for the appellants wants us that we should stay the operation of the order passed by the State Council as he desires to go before the Apex Court, but in view of the peculiar facts of the case, namely that the appellants are not in a position to show that they were and are possessing necessary qualifications for being registered as registered pharmacists and allow them to continue and act as pharmacists would be allowing them to play with the lives of the public at large. We are, therefore, of the opinion that no stay for the operation of the order of the State Council should be granted. We, therefore, reject his prayer for stay.

11. In the result, the Letters Patent Appeals are dismissed. Interim reliefs stands vacated.

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